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27 HIGHLAND CAPITAL MANAGEMENT, L.P.
28 HIGHLAND CRUSADER PARTNERS, L.P.
HIGHLAND CREDIT STRATEGIES, L.P.
NEXBANK, SSB

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

MICHAEL R. DANZI, an individual,
Plaintiff,

v.

HIGHLAND CAPITAL
MANAGEMENT, L.P., a Delaware
limited partnership, HIGHLAND
CRUSADER PARTNERS, L.P., a
Bermuda limited partnership;
HIGHLAND CREDIT STRATEGIES,
L.P., a Bermuda limited partnership;

Case No. SA CV 09-0039 CJC
(RNBx)

CORRECTED VERSION

**DEFENDANT NEXBANK, SSB'S
ANSWER TO COMPLAINT AND
COUNTERCLAIM**

DEMAND FOR JURY TRIAL

Before: Hon. Cormac J. Carney

NEXBANK, SSB, a Texas chartered
savings bank,

Defendants.

NEXBANK, SSB, a Texas chartered
savings bank,

Counterclaimant,

v.

MICHAEL R. DANZI, an individual,

Counterdefendant.

Defendant and Counterclaimant NexBank, SSB (“NexBank” or “Defendant”),
files this its Answer to Plaintiff’s Complaint and Counterclaim, and would show as
follows:

I.

ANSWER

ANSWERING SECTION TITLED “THE PARTIES”

1. Defendant is without knowledge or information sufficient to form a
belief as to the allegations in paragraph 1 and, therefore, denies the allegations.

2. Defendant admits that Highland Capital Management, L.P. is a limited
partnership organized and existing under the laws of the state of Delaware; admits
that its principal place of business is in Dallas, Texas; otherwise denied.

3. Defendant admits that Highland Crusader Offshore Partners, L.P.
 (“Crusader”) is a Bermuda limited partnership; admits that Crusader’s principal
place of business is in Dallas, Texas; otherwise denied.

4. Defendant admits that Highland Credit Strategies Master Fund, L.P.
 (“Credit Strategies”) is a Bermuda limited partnership; admits that Credit Strategies
principal place of business is in Dallas, Texas; otherwise denied.

5. Defendant admits that it is a savings bank chartered under the laws of
the State of Texas; admits that its principal place of business in Dallas, Texas;
otherwise denied.

1 6. No response is required to the allegations in paragraph 6, which purport
2 to state conclusions of law. To the extent a response is required, Defendant denies
3 the allegations in paragraph 6.

4 **ANSWERING SECTION TITLED “JURISDICTION AND VENUE”**

5 7. Paragraph 7 asserts legal conclusions; therefore, Defendant is not
6 required to admit or deny. To the extent Defendant is required to respond,
7 Defendant admits the citizenship of Defendants as stated, and denies the remaining
8 allegations in paragraph 7.

9 8. Paragraph 8 asserts legal conclusions; therefore, Defendant is not
10 required to admit or deny. To the extent Defendant is required to respond,
11 Defendant denies the allegations set forth in Paragraph 8.

12 **ANSWERING SECTION TITLED “GENERAL ALLEGATIONS”**

13 9. Defendant admits that Crusader, Credit Strategies, and Plaintiff entered
14 into a Limited Liability Company Operating Agreement (“Operating Agreement”)
15 of Legacy Pharmaceuticals International, LLC (“Legacy LLC”) for the purpose of
16 forming Legacy LLC; admits that Legacy Pharmaceuticals International, LLC owns
17 a variety of subsidiary companies, including Legacy Pharmaceuticals U.S., Inc;
18 admits that Legacy Pharmaceuticals U.S., Inc. maintains an office in Orange
19 County, California; and denies the remaining allegations in paragraph 9.

20 10. Defendant admits that Legacy LLC was formed in connection with the
21 acquisition of the businesses and assets of manufacturing plants owned by Valeant
22 Pharmaceuticals International, Inc.; admits that the acquisition was consummated
23 through Legacy LLC’s wholly-owned subsidiaries, Legacy Pharmaceuticals
24 International GmbH (“Legacy GmbH”) and Solco Pharmaceuticals Switzerland
25 GmbH (“Solco GmbH”); and denies the remaining allegations in paragraph 10.

26 11. Defendant admits Crusader, Credit Strategies, and Plaintiff are Members
27 of Legacy LLC, and Article I and Article II of Legacy LLC’s Operating Agreement
28 reflect such; and denies the remaining allegations of paragraph 11.

1 12. Defendant admits that Crusader and Credit Strategies entered into the
2 Legacy LLC Operating Agreement with Plaintiff, and respectfully refer Plaintiff and
3 the Court to the Operating Agreement for a full and complete recitation of its terms;
4 and denies the remaining allegations of paragraph 12.

5 13. Defendant admits that on or about June 22, 2007, a Credit Agreement
6 ("Credit Agreement") was entered into between (1) Legacy GmbH, as borrower, (2)
7 Legacy LLC, as one of several guarantors, (3) The Foothill Group, Inc. as a Lender
8 (together with other lenders who might be parties to the Credit Agreement from
9 time to time, the "Lenders"), (4) Highland Financial Corp., as lead arranger of the
10 Lenders, and (5) NexBank, as administrative agent for the Lenders; respectfully
11 refers the Plaintiff to the Credit Agreement for a full and complete recitation of its
12 terms; and denies the remaining allegations in paragraph 13.

13 14. Defendant admits that the Credit Agreement was entered into by and
14 between the parties identified in paragraph 13, respectfully refers the Plaintiff to the
15 Credit Agreement for a full and complete recitation of its terms; and denies the
16 remaining allegations in paragraph 14.

17 15. Denied.

18 16. Denied.

19 17. Defendant is without sufficient information to admit or deny the
20 allegations in paragraph 17, and on that basis, the allegations are denied.

21 18. Denied.

22 19. Defendant admits that a letter dated September 11, 2008 was sent from
23 Legacy Pharmaceuticals International to NexBank concerning the Par
24 Pharmaceuticals Acquisition, respectfully refers Plaintiff to the letter itself for a
25 complete and accurate recitation of its contents; and denies the remaining
26 allegations in paragraph 19.

27 20. Denied.

28 21. Denied.

1 22. Denied.

2 23. Defendant admits that NexBank sent an e-mail to representative of
3 Legacy LLC on October 24, 2008, respectfully refers Plaintiff to the e-mail for a full
4 and complete recitation of its contents, and denies the remaining allegations in
5 paragraph 23.

6 24. Denied.

7 25. Defendant admits that on November 21, 2008, NexBank sent a letter to
8 representatives of Legacy LLC, respectfully refers Plaintiff to the letter itself for a
9 complete and accurate recitation of its contents, and denies the remaining allegations
10 in paragraph 25.

11 26. Denied.

12 **ANSWERING SECTION TITLED "FIRST CLAIM FOR RELIEF"**

13 **(Breach of Fiduciary Duty Against Defendants Crusader and Credit Strategies)**

14 27. Defendant repeats and realleges its foregoing responses to the foregoing
15 allegations herein as if fully set forth at length.

16 28. Denied.

17 29. Denied.

18 30. Denied.

19 31. Denied.

20 32. Denied.

21 33. Denied.

22 **ANSWERING SECTION TITLED SECOND CLAIM FOR RELIEF**

23 **(Aiding And Abetting Breach of Fiduciary Duty**

24 **Against Defendant Highland Capital)**

25 34. Defendant repeats and realleges its foregoing responses to the foregoing
26 allegations herein as if fully set forth at length.

27 35. Denied.

28 36. Denied.

1 37. Denied.

2 38. Denied.

3 39. Denied.

4 **ANSWERING SECTION TITLED THIRD CLAIM FOR RELIEF**

5 **(Aiding and Abetting Breach of Fiduciary Duty**
6 **Against Defendant NexBank)**

7 40. Defendant repeats and realleges its foregoing responses to the foregoing
8 allegations herein as if fully set forth at length.

9 41. Denied.

10 42. Denied.

11 43. Denied.

12 44. Denied.

13 45. Denied.

14 **DEFENSES**

15 Defendant alleges the following defenses with respect to the claims alleged in
16 Plaintiff's Complaint without assuming the burden of proof where the burden of
17 proof rests on Plaintiff:

18 **First Defense**

19 The Complaint fails to state a claim for which relief can be granted.

20 **Second Defense**

21 The Court lacks personal jurisdiction over the Defendant.

22 **Third Defense**

23 Venue is improper in this Court.

24 **Fourth Defense**

25 Plaintiff has no standing to bring this action because his claims are derivative
26 in nature.

27 **Fifth Defense**

28 Plaintiff's claims are barred by the doctrines of waiver and/or estoppel.

Sixth Defense

Plaintiff's claims are barred by the doctrine of unclean hands.

II.

COUNTERCLAIM

THE PARTIES, JURISDICTION, AND VENUE

1. Counterclaimant NexBank, SSB is a savings bank chartered under the laws of the State of Texas.

2. NexBank is informed and believes that Counterdefendant Michael R. Danzi ("Danzi") is an individual residing in the County of Orange, State of California.

3. This Court has jurisdiction over the subject matter of this action under 28 § U.S.C. 1332(a), as there is complete diversity between the parties, and the amount in controversy exceeds \$75,000. Venue is proper in this District under 28 U.S.C. § 1391(a)(3), as Danzi has submitted to personal jurisdiction through filing his Complaint in this District. Assignment to this Division is proper because Danzi, the sole Counterdefendant, resides in this Division.

GENERAL ALLEGATIONS

4. On or about June 22, 2007, a Credit Agreement ("Credit Agreement") was entered into between (1) Legacy GmbH, as borrower, (2) Legacy LLC, as one of several guarantors, (3) The Foothill Group, Inc. as a Lender (together with other lenders who might be parties to the Credit Agreement from time to time, the "Lenders"), (4) Highland Financial Corp., as lead arranger of the Lenders, and (5) NexBank, as administrative agent for the Lenders. A true and correct copy of the Credit Agreement, without exhibits, is attached to this Counterclaim as Exhibit 1.

5. Under the Credit Agreement, the Lenders agreed, subject to conditions specified therein, to extend certain credit facilities to Legacy GmbH in an aggregate amount not to exceed \$43,000,000, consisting of an aggregate principal amount of

1 \$38,000,000 in Term Loans and up to an aggregate principal amount of \$5,000,000
2 in Revolving Commitments.

3 6. In connection with the Credit Agreement, a number of ancillary
4 agreements were executed to provide NexBank and the Lenders with collateral for
5 the loans. One of those agreements was a Pledge Agreement between Danzi and
6 NexBank dated June 22, 2007, which Danzi executed in Dallas, Texas. A true and
7 correct copy of Danzi's Pledge Agreement is attached hereto as Exhibit 2.

8 7. On January 8, 2009, NexBank notified parties obligated under the
9 Credit Agreement and related documents of certain Events of Default that had
10 occurred under the Credit Agreement. A true and correct copy of NexBank's
11 January 8, 2009 Letter is attached hereto as Exhibit 3. Specifically, NexBank's
12 January 8 letter advised that Legacy had defaulted on the loan by: (1) failing to
13 remit \$1,621,683.85 in proceeds from the sale of Building 11, which was required to
14 be repaid under Section 6.9(h) of the Credit Agreement; (2) and failing to deliver
15 Legacy's 2009 Financial Plan no later than fifteen days prior to the beginning of the
16 fiscal year, as required by Section 5.1(h) of the Credit Agreement. *Id.* NexBank's
17 letter demanded that the Building 11 Proceeds be transmitted by January 12, 2008
18 and that the 2009 Financial Plan be furnished by January 16, 2009, and advised that
19 the default interest rate must be paid. *Id.* None of these demands were, or have
20 been, met.

21 8. After NexBank's January 8, 2009 letter, additional Events of Defaults
22 were discovered. These additional Events of Default, together with those outlined in
23 NexBank's January 8, 2009 letter, ultimately resulted in NexBank accelerating the
24 \$38 million debt owing under the Credit Agreement and commencing foreclosure
25 proceedings, including through a lawsuit filed in Texas. A true and correct copy of
26 the Verified Original Petition filed in Texas ("Texas Lawsuit"), without exhibits, is
27 attached hereto as Exhibit 4. As set forth in the Verified Original Petition filed in
28 Texas, the additional Events of Default discovered include: (i) Legacy's creation of

1 a new subsidiary called Solco Healthcare US, LLC ("Solco US") without complying
2 with the procedures in Section 5.9 of the Credit Agreement for giving NexBank a
3 lien on such subsidiary's assets; (ii) submitting admittedly false financial statements
4 and Financial Officer Certifications in violation of Sections 5.1(a)-(c) between
5 September 2007 and November 2008; and (iii) submitting a false Compliance
6 Certificate that purported to show compliance with the Leverage Ratio and Interest
7 Coverage Ratio covenants in violation of Sections 5.1(d) and 6.8. *See* Ex. 4, ¶¶ 21,
8 33-36.

9 9. On February 20, 2009, based on the multiple Events of Default,
10 NexBank sent a letter to Legacy and Plaintiff advising that it had elected to
11 accelerate the maturity of all obligations under the Credit Agreement. A true and
12 correct copy of NexBank's February 20, 2009 Letter is attached hereto as Exhibit 5.
13 The full amount of Legacy's obligations in the amount of \$38,201,520.99 (plus all
14 reimbursable costs including attorney's fees and expenses) became immediately due
15 and owing. The parties were advised that NexBank intended to foreclose on its
16 interests in any collateral securing the loan amount. In addition, Danzi was given
17 notice that his pledged shares in Legacy LLC would be sold at a foreclosure sale on
18 March 4, 2009 at 11:00 a.m. in Richardson, Texas. That same day, NexBank filed
19 the Texas Lawsuit seeking, among other things, to foreclose on its security interests
20 in assets other than the membership interest pledged by Plaintiff. *See* Ex. 4.

21 10. On or about February 25, 2009, the Defendants in the Texas Lawsuit, at
22 Danzi's direction, filed a Plea in Abatement requesting that the Texas state court
23 abate the Texas Lawsuit in favor of this case. A true and correct copy of the Plea in
24 Abatement, without exhibits, is attached hereto as Exhibit 6.

25 11. On the night of February 25, 2009, Danzi filed an Emergency
26 Application for a Temporary Restraining Order in this Court seeking to enjoin the
27 scheduled foreclosure sale of Danzi's pledged shares in Legacy LLC.
28

16. This Court has determined that it has jurisdiction over this litigation. An injunction pursuant to 28 U.S.C. § 1651 is necessary to aid this Court's jurisdiction and is the only remedy available to prevent Plaintiff and the Texas state court from interfering with this Court's consideration and disposition of Plaintiff's request for a temporary restraining order.

P R A Y E R

WHEREFORE, NexBank prays for judgment as follows:

A. That Plaintiff's Complaint be dismissed with prejudice and that Plaintiff take nothing thereby;

B. That NexBank be awarded judgment in its favor on its Counterclaim;

C. That an Order in aid of this Court's jurisdiction be entered pursuant to 28 U.S.C. § 1651 enjoining Plaintiff, and the Dallas County District Court, 101st Judicial District from interfering with the integrity of this Court's Order denying Plaintiff's Application for a Temporary Restraining Order, or from otherwise interfering with the foreclosure sale of Danzi's pledged shares in Legacy LLC;

D. That NexBank be awarded its costs of suit, including reasonable attorneys' fees;

E. That NexBank be awarded such other and further relief as the Court deems just and proper.

Respectfully submitted,

DATED: March 4, 2009

Haynes and Boone, LLP

By

CLARK S. STONE

Attorneys for DEFENDANTS
HIGHLAND CAPITAL MANAGEMENT,
L.P. HIGHLAND CRUSADER OFFSHORE
PARTNERS, L.P., HIGHLAND CREDIT
STRATEGIES MASTER FUND, L.P. AND
NEXBANK, SSB

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendant and Counterclaimant NEXBANK, SSB hereby demands a trial by jury on all issues so triable in this action.

DATED: March 4, 2009

Haynes and Boone, LLP

By



CLARK S. STONE

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